



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 45 OF 2017

LABOUR OFFICER KAKAMEGA COUNTY.....CLAIMANT

VERSUS

RODGERS SENATI MULEMI.....RESPONDENT

J U D G M E N T

The suit was filed by Labour Officer Kakamega County on behalf of one Maurice Imala Silokho. The claim is for payment of terminal benefits upon the Claimant being declared redundant.

The grievant claims:

- i. One month salary in lieu of notice Kshs 13,614.40
- ii. Severance pay for six years Kshs 40,843.20.
- iii. Under payment between
 - a) 1.8.2011 to 31.4.2012 Kshs 9, 533.70
 - b) 1.5.2012 to 31.4.2014 Kshs 29,310
 - c) 1.5.2013 to 31.1.2014 Kshs 86,402.40
- iv. Annual leave for 2011, 2012, 2013 and 2014 Kshs 40,166.00

Total Claim Kshs 219,870.00

The Claimant testified under oath on 29.11.2017 and the matter was adjourned halfway. The Claimant continued to testify on 23.7.2018.

The Claimant told the court that he was employed as a petrol attendant by the Respondent Rodgers Senaji Mulemi at a petrol station in Kakamega. That he was not given a Letter of Appointment. That he was paid Kshs 6000 per month. That he worked until 3.2.2015 and was employed in September 2008. That he was told that the company needed to reduce expenses and would be paid 3 months salary as terminal benefits. The Claimant said that he had worked for a period of six years, 5 months and 3 days. That he was given leave in 2009, 2010 and 2011 and got no leave for other years until he left. That he was entitled to 21days leave per year. The Claimant declined the terminal pay and reported the dispute to the Ministry of labour.

The Claimant stated that he was under paid. That he was paid Kshs 7,000 before the respondent took over the station. That the Respondent reduced the pay to Kshs 6,000. The Claimant seeks arrear salary in respect of under payments accrued in terms of the general wage order for the periods set out in the statement of claim. That he also claims payment in lieu of notice because he was summarily dismissed on the same day without notice.

That he claims Kshs 219, 870.60 as set out under paragraph 6 of the Statement of Claim.

The Claimant had recorded a comprehensive witness statement dated 30.08.2016 which he relied on as his further evidence in chief.

The Claimant produced a Letter of demand from the Ministry of Labour dated 14.1.2010 and another dated 5.5.2015. Negotiations to resolve the matter did not bear fruits hence the suit.

Under cross examination by Mr. Abok for the Respondent, the Claimant insisted that the Respondent was his employer. That he worked for Kenol Kobil Oil Company. That the Respondent was his boss. That they were eight (8) pump attendants. That the Respondent operated Kenol Kobil Petrol station. That the employees belonged to the Respondent but he had no documents to show that. That the Respondent paid them in cash and had no payslips. That later salary was remitted to KCB and later to Diamond Trust Bank. That he had no Bank statements.

RW1 Rodgers Senaji Mulemi testified and told the court that he was a business man from Chavakali. RW1 adopted his witness statement dated 21.3.2019 as his evidence in chief. In the witness statement the Respondent simply states that he has been cited as the Respondent and that the Claimant was not his employee. That he relied on the response to the Memorandum of Claim as his evidence in the suit. That the Claimant's suit be dismissed with costs.

In the response to the Memorandum of claim filed on 16.3.2017, the Respondent denied having ever employed the Claimant and therefore did not declare him redundant. The respondent denied all the particulars of claim set out under paragraph 6 of the Memorandum of Claim. The Respondent states that he attended the scheduled meetings by the Ministry of Labour but the Claim was not resolved.

Under cross examination by the Claimant in person, the Respondent denied having known the Claimant. He denied having ever paid the Claimant. He denied that the Claimant banked his money and held the safe key for a period of 4 years from the year 2011. He denied having paid NSSF for the Claimant. He denied owning Kenol Kobil Petrol station. He said he was the owner of Imara holdings and that Imara Holdings did not own Kenol Kobil. He denied that he owned Imara Sacco.

He denied a cheque shown to him by the Claimant drawn in RW1's name. He denied having seen a receipt shown to him by the Claimant on a Kenol Kobil Letter head. He admitted that the address on that receipt was that of Imara holdings. RW1 told the court that everybody left Imara Holdings happily. He denied that in 2012, Kenol Kobil brought him a circular with salary scales for the employees.

Under re-examination, RW1 stated that in 2008, Kenol Kobil approached him to run a petrol station. That he took a dry lease and invested money in the petrol station but did not run the business. That the employer of the employees was Kenol Kobil and not the Respondent and that the employer paid NSSF and NHIF for the employees and not him.

Determination:

The issues for determination are:-

- a) Whether the respondent was the employer of the grievant.
- b) Whether the grievant is entitled to the reliefs sought.

Issue (a)

The Claimant testified under oath that he was employed by the Respondent in September 2008 and that he worked for the Respondent as his boss continuously until the Respondent declared the Claimant redundant on 31st February 2015.

That initially he worked for Kenol Kobil but the Respondent took over the business and reduced his salary from Kshs 7000 to Kshs 6000 per month. That he worked as a supervisor and did banking and kept safe keys. That he was underpaid; was not given notice, nor paid in lieu of notice and that he was entitled for 21 days leave annually.

That he took leave up to the year 2011 but did not go on leave in 2012, 2013, 2014.

The Claimant seeks the reliefs set out under paragraph 6 of the Memorandum of Claim.

The Respondent in his testimony made bare denial that he did not know the Claimant at all, that he did not employ the Claimant at all and that he did not own Kenol Kobil Petrol station. That Kenol Kobil was the employer of the Claimant and other employees.

The court finds that RW1 did not tell the truth that he did not know the Claimant at all. RW1 would have done better to deny being the employer of the Claimant but in the least admit that he worked and supervised the Claimant and other employees at the Kenol Kobil Petrol station. RW1 admitted having invested in the petrol station and told the court that all the employees left the station happy.

It is the court's considered view that the Respondent was not candid with the court and the court declares RW1 unreliable witness.

The Claimant was consistent and candid and the court believes that he had worked for the Respondent for a period of six years and the two knew each other well. The court finds that the Claimant was underpaid, did not go on leave and was not paid in lieu of notice. The court finds the Claimant has proved the claims set out under paragraph 6 of the Memorandum of Claim and awards the Claimant accordingly.

Judgment is entered in favour of the Claimant as against the Respondent as follows:-

- a) Kshs 13,614.40 in lieu of notice
- b) Kshs 80,843.70 service pay for six years.

c) Under payments in the sum of Kshs 125, 246.10

d) Kshs 40, 166.90 in lieu of leave days not taken.

Total award Kshs 219, 870.60

e) Interest at court rates from date of filing suit till payment in full.

f) Costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 30TH day of MAY, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Claimant in person

Mr. Abok for Respondent

Chrispo: Court Assistant.